

BEFORE THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT
RESIDENTIAL OR OUTDOOR PROGRAMS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION
NEW RULES I - VI pertaining to)
private alternative adolescent)
residential or outdoor programs)

To: All Concerned Persons

1. On October 6, 2005, the Board of Private Alternative Adolescent Residential or Outdoor Programs published MAR Notice No. 24-181-1 regarding the public hearing on the proposed adoption of the above-stated rules relating to private alternative adolescent residential or outdoor programs, at page 1886 of the 2005 Montana Administrative Register, issue no. 19.

2. A public hearing on the proposed adoption was held on October 26, 2005. Members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period on November 3, 2005.

3. The Board of Private Alternative Adolescent Residential or Outdoor Programs has thoroughly considered all of the comments made. A summary of the comments received and the Board responses are as follows:

Comment 1: Three individuals testified orally and two of the three oral presenters also submitted written comments. Written testimony was received from one individual who did not testify. All testimony and comments were generally in favor of adoption of the proposed new rules.

Response 1: The Board acknowledges the comments.

Comment 2: Oral testimony by two individuals concerned the requirement in proposed NEW RULE IV(1)(e) for a "list of all individuals and/or entities, not included in (1)(d) who provide services directly to program participants." Both individuals felt that this all-inclusive requirement would be overly burdensome, beyond the legislature's intention and possibly in violation of constitutional rights to employment information privacy in Montana. Further, they argued that the requirement might dissuade some programs from registering and that it would, in fact, be impossible for a large program to fulfill accurately since staff turnover, etc., would require constant updating of the list. A written brief on the matter was submitted by one of the individuals in support of their arguments.

Response 2: The Board agrees to delete subsection (1)(e) from the rule as requested.

Comment 3: The same individuals also commented on proposed NEW RULE IV(1)(g)'s requirement that programs provide "a copy of all program policies and procedures, including but not limited to:...(v) complaints or grievances;" Both commentors ask the Board to delete the word "all" and "(v) complaints or grievances." The commentors cited the burdensome nature of providing the information and the need to streamline the registration and information-gathering process to conform with the legislature's intentions.

Response 3: The Board agrees to change NEW RULE IV(1)(g) to eliminate the word "all." The Board declines to delete subsection (1)(g)(v) on the grounds that the Board believes that a written complaint or grievance policy promotes procedural due process.

Comment 4: The third individual, who was in strong support of the proposed new rules, commented orally on the testimony presented by the first two commentors. He stated that the Board's use of the term "all" in proposed NEW RULE IV(1)(e) and (g) to be appropriate and necessary.

Response 4: The Board recognizes that with respect to NEW RULE IV(1)(e), the level of detail sought for non-therapeutic staff is unduly burdensome. With respect to NEW RULE IV(1)(g), the Board recognizes that policies not affecting participants (such as employee sick leave or vacation policies) are not likely to have a significant impact upon program participants.

Comment 5: In written comments, the same commentor urged the Board to list on its website the names of programs, program managers and the addresses of programs that are not yet registered in order to inform the public of the scope of the Board's expected reach.

Response 5: The Board believes it does not have statutory authority to list programs that are not registered.

Comment 6: The same individual also asked the Board to pluralize the term "restraint" in proposed NEW RULE IV(1)(g)(vi)(E) because "restraints" are mechanical devices about which the Board should be notified.

Response 6: The Board will make the change as requested.

Comment 7: One written comment was received that asked that the proposed rules include sanctions to be imposed against programs that fail to register.

Response 7: The Board believes it lacks the statutory authority to impose sanctions upon programs that do not register.

Comment 8: The written comment also asked that a public notice requirement in excess of that of statutory requirements be

adopted to ensure that programs know about the new rules.

Response 8: The Board and the Department intend to publicize these rules in ways designed to reach the relevant programs and program operators. Those efforts will go beyond the minimal requirements of rulemaking as provided by MAPA.

4. After consideration of the comments, the Board adopts NEW RULE I (ARM 24.181.404), NEW RULE II (ARM 24.181.301), NEW RULE III (ARM 24.181.401), NEW RULE V (ARM 24.181.505) and NEW RULE VI (ARM 24.181.502) exactly as proposed.

5. After consideration of the comments, the Board has adopted NEW RULE IV (ARM 24.181.501), with the following changes, stricken matter interlined, new matter underlined:

NEW RULE IV (ARM 24.181.501) APPLICATION FOR REGISTRATION

(1) through (1)(d) remain as proposed.

~~(e) a list of all individuals and/or entities, not included in (1)(d), who provide services directly to program participants,~~

(f) remains as proposed but is renumbered (e).

~~(g) (f)~~ a copy of all program policies and procedures, including but not limited to:

(i) through (D) remain as proposed.

(E) use of seclusion and/or ~~restraint~~ restraints.

(2) through (7) remain as proposed.

AUTH: 37-1-131, 37-48-103, MCA

IMP: 37-1-131, 37-48-103, MCA

BOARD OF PRIVATE ALTERNATIVE
ADOLESCENT RESIDENTIAL OR OUTDOOR
PROGRAMS
PAUL CLARK, CHAIRPERSON

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State December 12, 2005